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A Professional Association

October 22, 2008

FILED VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92
Intercarrier Compensation for ISP-Bound Traffic, CC Docket No. 99-68
High-Cost Universal Service Support, WC Docket No. 05-337
Federal-State Joint Board on Universal Service, CC Docket No. 96-45

Dear Ms. Dortch:

The Minnesota Independent Coalition ("MIC")[1] offers the following comments to assist in refreshing the record in the above-referenced dockets. The MIC also wishes to convey its concerns regarding what has become known about Chairman Martin's proposed order being circulated to the FCC Commissioners for review.

It appears Chairman Martin's proposed order, if adopted, would have devastating consequences for rural customers and the rural Rate of Return ILECs ("RoR ILECs") that serve them.[2] For example, while the proposal apparently mandates broadband coverage in order to receive federal universal service funds, the revenue sources needed to pay for network upgrades required to meet the mandate are drastically cut or capped. RoR ILECs cannot deploy broadband networks if intercarrier compensation rates are severely reduced and if the USF Highcost funds are capped at 2008 levels.

Chairman Martin's proposed order also appears to include significant new elements that have never been open to public review and comment. The MIC urges the Commissioners to reject the Chairman's proposed order.

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[1] The MIC is an unincorporated association of over seventy-five small, Incumbent Local Exchange Carriers ("ILECs") providing local exchange service to primarily rural areas in Minnesota. MIC members are responsible for telecommunications service to customers throughout 50% of Minnesota's land mass - including service to over 250 small communities and their surrounding rural areas. MIC members average approximately 4,800 access lines, although half of the MIC members have fewer than 1,800 access lines. The average number of access lines per exchange is approximately 1,100 with half serving fewer than 600 access lines.

[2] *See* Ex Parte Presentation by Mid-Size Incumbent Carriers, filing by Gregory J. Vogt, PLLC, CC Docket No. 01-92; CC Docket No. 99-68; WC Docket No. 05-337; CC Docket 96-45 (October 20, 2008); Ex Parte Presentation by National Association of Regulatory Utility Commissioners, CC Docket No. 01-92; CC Docket No. 08-152; WC Docket No. 04-36; WC Docket No. 06-122; WT Docket No. 05-194; CC Docket No. 80-286 (October 21, 2008).

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The MIC is supportive of reforming the intercarrier compensation payment system and the Universal Service Fund system, but believes the changes proposed in Chairman Martin's draft order and in the plan promoted by AT&T and Verizon are not balanced and are harmful to consumers and investment in the rural areas served by the MIC members. The MIC's comments offer insights to understand the interests of RoR ILECs and their customers in achieving intercarrier compensation and Universal Service Fund reform.

Significant Differences Must Be Recognized.

The MIC agrees with NECA and the Executive Group in observing that 47 U.S.C.§ 252(d)(2) does not "mandate a single, nationwide rate, particularly one that is below incremental cost levels incurred by rate of return carriers in providing service in rural areas."[3] Rather, § 252(d)(2) (and therefore Congress) clearly intends that "just and reasonable" rates be evaluated in the context of the relevant costs for "each carrier."

AT&T and Verizon's proposed unified $0.0007 per minute rate is untenable for RoR ILECs. As noted in other filings, RoR ILECs rely upon cost-based access rates to fund costs and upgrades for their carrier of last resort networks.[4] Reducing all intercarrier compensation to $0.0007 would not permit RoR ILECs to even recover the administrative costs associated with billing for the related traffic,[5] let alone allow them to recover the costs associated with the transport and termination of that traffic on their networks.

Intercarrier compensation is undeniably in need of reform. However, the public interest is not served by the adoption of an intercarrier compensation regime that fails to distinguish between RoR ILECs and ILECs serving urban areas. A plan designed and promoted by primarily urban carriers predictably does not address the challenges faced by rural RoR ILECs. Most critically, rural ILECs have a much higher average investment and expense per subscriber line than do urban ILECs. Imposition of a "one size fits all" approach fails to take this fundamental distinction into account and puts at grave risk the ability of RoR ILECs to maintain the networks serving rural Americans, and to fund upgrades to provide these consumers with broadband services on par with those available to urban consumers. Even between RoR ILECs, there are substantial differences that preclude a simplistic, single rule approach.[6]

It should also be noted that the adverse impact of degraded RoR ILEC networks would extend beyond those networks. Without the availability and continued deployment of these networks, competitive voice services such as VoIP and wireless would lack the supporting infrastructure necessary to communicate with towers and end users in many rural areas, thus reducing customer choice. The MIC joins with others representing the interests of RoR ILECs in

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[3] Letter from Richard Askoff, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (October 6, 2008) ("NECA"), pg. 2; Ex Parte Presentation by Midwest Telecom Executives, CC Dockets 01-92; WC Docket 04-36; WC Docket 06-122 (October 14, 2008) ("Executive Group"), pg. 3.
[4] *See* NECA; Executive Group, pg. 2.
[5] NECA, pg. 2; Executive Group, pg. 3.
[6] *See* Letter from OPASTCO and Western Telecommunications Alliance to Marlene Dortch, FCC, CC Docket 01-92; WC Docket 05-337; CC Docket 96-45 (October 10, 2008) ("OPASTCO/WTC"), pg. 2.

cautioning against regulatory simplicity when the risks inherent in ignoring fundamental differences between carriers are so great.[7]

Key Elements Must Be Addressed.

There are key elements that must be addressed in any plan reforming intercarrier compensation.

First, any plan must provide some balance between revenues lost to RoR ILECs as a result of reductions in access and other revenues under the plan, with a long term replacement for those lost revenues. The source and the scope of the funding for this replacement must be identified.[8]

Second, the plan should address both terminating and originating access rates. Both terminating and originating access are subject to avoidance and arbitrage. The plan should be designed to minimize arbitrage opportunities and ensure that RoR ILEC end users (as opposed to interexchange carriers) experience some benefit from reduced access rates. Specifically, any reductions in access charges should be reflected in interexchange carrier end user rates and in wholesale product offerings.

Third, the plan should: (a) ensure that permitted access charges are applied to *all* forms of interexchange traffic terminating on the PSTN (including VoIP/IP originated traffic; and (b) require the use of processes and mechanisms, for *all* traffic terminating on the PSTN, that would reduce "phantom" or unbillable traffic. For example, detailing call signaling and call record requirements applicable to all service providers terminating calls on the PSTN (regardless of the technology employed) would better enable terminating ILECs to recover permitted charges for the use of their networks.[9]

Fourth, the FCC should require that ISP bound traffic be exchanged on a bill-and-keep basis, either within the terms of the plan or by separate order.[10] The MIC agrees that terminating LECs serving ISP companies are capable of being fully compensated for the use of their networks when the ISP companies purchase end-user business lines. The LECs should establish business rates appropriate to that used by its ISP company customers.

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[7] *See* Executive Group, pg. 4: "The policy implications are clear; if the Commission blindly adopts a 'one size fits all intercarrier compensation regime resulting in the identical treatment of rural, rate of return carriers and urban, price cap carriers, the Commission is actively participating in the demise of rural network investment, increased service rates for rural consumers, and the potential that rural carriers will no longer have the means to provide their customers with the quality, advanced services and comparable rates Congress mandated when it enacted § 254(b)(3)."

[8] *See* Ex Parte filing by the Rural Alliance, CC Docket 01-92 (September 26, 2008), ("Rural Alliance"), pg. 2.

[9] OPASTCO/WTC, pg. 3.

[10] *See* Ex Parte letter filing by CenturyTel, Inc., to Marlene Dortch, FCC, CC Docket 99-68; CC Docket 01-92 (October 6, 2008) ("CenturyTel").

Finally, the MIC believes the plan should be phased in with periodic scheduled reviews to determine its effectiveness during the phase-in periods. There should be flexibility within the plan, as implemented, to permit a balancing between the decreased level of access rates, increased end user rates, and access to support, if needed. Flexibility should also exist, in recognition of the substantial differences between RoR ILECs, to permit carriers to accelerate access reductions, if they choose to do so.

The MIC Supports Plans Offered By Representatives of RoR ILECs.

The MIC believes the plans offered by the Rural Alliance and the ITTA[11] provide significant guidance in understanding the issues and key elements critical to RoR ILECs in intercarrier compensation reform. The compromise plan proposed by OPASTCO/WTA further builds on the Rural Alliance and ITTA plans in identifying what is important to RoR ILECs The MIC supports, and encourages the FCC to adopt, the following points that are detailed in the OPASTCO/WTA plan:

- An interstate-intrastate rate unification plan should be established that retains the existing access and reciprocal compensation regimes and would apply to rural RoR ILECs.
- RoR ILECs would unify their interstate and intrastate access rates for end-office switching and transport for originating and terminating traffic by reducing intrastate rates to existing interstate levels over a three-year transition period and may, at their option, set even lower unified end-office switching rates during the transition period.
- At the end of year three, each rural RoR ILEC would select one of the following two options:
    - First Option: originating and terminating access rates for end-office switching remains at the unified interstate level.
    - Second Option: over the next two years, originating and terminating access rates for end-office switching are further reduced to a unified rate below the existing interstate rates.
- The Restructure Mechanism ("RM") provides critical revenue stability and the cost recovery required to maintain service quality and encourage and enable investment in broadband and other network upgrades as end-office switching rates are unified and reduced, and precludes the need for substantial and unaffordable increases in end-user rates to offset access revenue reductions.
- The plan should include an end-user benchmark mechanism and an associated maximum subscriber line charge ("SLC") increase of $2.25 over three years for the purposes of: (a) recovering a reasonable and affordable portion of the reduced access revenues from end users; (b) keeping the RM at a sustainable size; and (c) creating a reasonable degree of equity in the rates charged in different states.

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[11] Notice of Ex Parte filed by Independent Telephone & Telecommunications Alliance to Marlene Dortch, FCC, CC Docket 01-92; WC Docket 04-36; CC Docket 96-45; WC Docket 05-337 (September 29, 2008).

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- The plan should include a "rural transport rule" that reasonably limits the financial obligation of RoR ILECs for the transport of non-access traffic beyond their meet-points with non-rural carriers and eliminates the potential for excessive transport costs that would significantly increase rural end-user rates.
- Traffic under the separate access and reciprocal compensation regimes would be identified, as to the appropriate compensation, based on the "number rules" delineated in the Missoula Plan. The terminating unified access rate should be a fixed default rate, for all terminating traffic, subject to voluntary negotiation of a different rate. Where there are existing agreements for the exchange of terminating traffic under Section 251(b)(5): (a) if the existing agreement rate is higher than the fixed default rate, the rate payable under the agreement would be reduced to the fixed default rate; and (b) when the agreement expires, the carriers would charge the lower of the expired agreement rate or the fixed default rate.
- During the first three years of transition, interstate originating and terminating rates would be capped, and the shortfall (if any) from the interstate revenues generated from the capped interstate originating and terminating access rates and the interstate originating and terminating access revenue requirement would be recovered from either the LSS or interstate common line support ("ICLS") universal service mechanisms.
- Beginning at year four, the originating and terminating rates for those rural RoR ILECs that choose the First Option would be capped, and the shortfall (if any) from the revenues generated from the capped originating and terminating rates and the originating and terminating access revenue requirement would be recovered from either the LSS or the ICLS universal service mechanisms.
- The plan should include call signaling, call record and other intercarrier compensation requirements to ensure that all service providers whose traffic terminates on ILEC networks (including wireless carriers and VoIP providers) pay for their use of the networks.
- NECA pools should work in conjunction with the RM and continue to assist rural ILECs in recovering network costs and maintaining revenue certainty while keeping nationwide rural access rates at the lowest practicable levels
- The plan should uncap or re-base the High-Cost Loop Support (HCLS) universal service mechanism in order to encourage and enable upgrades of the rural loop facilities necessary to provide rural consumers with reasonably comparable access to advanced services.
- A proceeding should be initiated in Year Two to evaluate how the plan is working and permit early modification and adjustments.

With regard to the local service benchmark cap, the MIC supports a modification to the OPASTCO/WTA Plan, in establishing the benchmark by either using (a) a state-by-state average local rate calculation, or (b) the $20.76 national average benchmark also supported by the ITTA.

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The MIC additionally encourages the FCC to carefully consider the impact of any plan on the viability of rural competitive local exchange carriers, which in many instances provide the only landline competitive telecommunications service offering in many rural communities.

Respectfully submitted,

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